

MCLE ON THE WEB (\$15 PER CREDIT HOUR)  
TEST #3  
1 HOUR CREDIT  
GENERAL EDUCATION

To earn 1 hour of general MCLE, read the substantive material, then download the test, answer the questions and follow the directions to submit for credit.

## **The Value of Billing**

Bills can demonstrate the value of the legal services rendered, not just the cost

By IDA O. ABBOTT

Most lawyers view billing as a necessary nuisance. Gone are the days when a lawyer could send out a bill that stated a sum and read simply, "For professional services rendered."

Today's clients demand detailed bills using customized formats. They scrutinize bills carefully and challenge entries unabashedly. Even lawyers who keep meticulous time records and use computerized billing software to make the process easier get frustrated. They dread having to defend their bills when angry clients call, having to write off time to placate the client, and having to justify the write-off to their partners.

But billing need not be so painful. Although lawyers frequently discuss the movement toward value billing, they pay little attention to the value of billing.

Rather than an ordeal, billing should be seen as a tool to provide superior client service. Bills should be used as a means to establish and maintain effective attorney-client communications, and, concomitantly, as a fundamental device for keeping clients satisfied and loyal. They should be a vital element of case planning and management, leading to more efficient and profitable delivery of legal services. For bills to produce these benefits, however, attorneys must understand and use bills correctly.

### **Begin at the beginning**

Business clients today are sophisticated consumers who expect attorneys to provide high-quality legal services at a reasonably low cost. Because clients themselves must plan and adhere to budgets for legal services, the predictability of legal fees is a paramount concern.

Clients use their attorneys' budgets to predict legal costs; they use the attorneys' bills to control legal costs. As clients come under greater pressure to reduce legal expenses, they expect attorneys to provide cost estimates upon which they can rely. They also want bills that enable them to assess the value of the work being performed, and to track and compare the efficiency of the lawyers doing that work.

In order to meet these client expectations, lawyers must carefully plan litigation and transactional matters at a very early point in their representation.

Too often, however, lawyers jump right into a case without sufficient planning. They assume they know what the case and the client need. Rarely do they prepare a comprehensive case plan that includes the scope of the engagement, case goals and objectives, overall strategy, identification and allocation of personnel and other resources, timetable and budget. Yet this is precisely what they must do in order to meet clients' needs for predictable legal expenses.

The lawyer must also discuss the case thoroughly with the client, using the information obtained to draft the case plan and budget. A lawyer should determine at the beginning of a legal engagement both the financial limitations and expectations of the client and the resources, steps, and activities necessary to handle the case.

Armed with this information, the attorney can outline the work to be done and the costs to be incurred. Together, attorney and client can then determine and agree upon case objectives, strategy and budget.

Where financial constraints restrict the scope of the work, the attorney can suggest less costly alternatives, explaining to the client the risks inherent in each. As the discussions progress, the attorney will be able to design an appropriate case plan and budget for the client.

In addition to the case plan and budget, the attorney and client should discuss the billing process. They should agree on the billing format to be used, the frequency of billing, decision points or time periods for reviewing the case plan or budget, and the client's payment obligations, including the fee agreement.

By communicating with the client about these subjects at the beginning of the engagement, the attorney and client lay the groundwork for a dynamic and trusting relationship. A client who contributes to the development of a well-reasoned case plan and budget is more likely to find both acceptable.

A relationship based on trust and shared understanding makes dissension less likely as the matter goes forward. When problems do arise, it is more likely that they can be resolved amicably.

These early communications also save time and decrease stress in the long run by reducing the time lawyers spend explaining, justifying or arguing about bills. If clients know what work was planned and what strategy was being followed, they are better able to understand and accept your bills.

If budgets, case plans and billing procedures are explained and agreed upon at the outset, the attorney and client can monitor and manage the case more effectively, with fewer misunderstandings or cost overruns. As a result, lawyers will spend far less time in difficult, frustrating billing disputes with clients.

### **Good case management**

From the client's standpoint, a bill should tell a story about what has happened in the case. From looking at a bill, the client should be able to assess clearly and without confusion all the work that has been done on the case during the billing period, who did the work, when it was done, and how much it cost.

A bill should demonstrate that the case is on schedule, on budget, and following stated case objectives and strategies, or it should account for any variances. It should enable clients to assess the value of the work already done and analyze the risk, benefit and importance of anticipated work.

When a case has a budget, comparing actual to budgeted expenses provides a measure of how efficiently the case is being managed. Using this information on an ongoing basis, clients can better control their legal costs and financial exposure, and they can make more informed decisions about the future direction of the case.

Bills also enable attorneys to monitor their own efficiency and productivity. Comparing one's work from month to month and case to case, or comparing one attorney's time against another's for similar work, offers insights into attorney performance, reveals efficient and inefficient work processes and highlights factors that hold productivity down.

Comparing actual time and expenses against the budget enables the attorney to identify case management problems and take preventive or corrective action before small problems become major ones.

A review of billed time also allows the firm to trace the progress, skill development and efficiency of junior associates. This can help the firm target training efforts in areas where lawyers' experience, efficiency or productivity appear to be inadequate.

Another management benefit derived from billing data is improved staffing. By analyzing the time spent by partners, associates and legal assistants, their respective hourly rates, and the quality of the work they perform, the supervising attorney can determine the most effective staffing for various kinds of work.

In many engagements, clients want partners or experienced senior associates to do most of the work. The supervising attorney's presentation of data that demonstrates the relative cost and value of partners, associates and legal assistants can influence the clients' thinking and enable them to make more informed decisions about how they want to spend their dollars.

#### **Attorney-client communications**

In addition to helping initiate a strong attorney-client relationship during the planning stage of a case, bills can be used to promote good ongoing communications between attorney and client. At the most basic level, bills keep the client informed about what the attorney is doing and charging.

But attorneys can also use bills as periodic progress reports by including summaries of activities and outcomes during the period covered. They can use bills to describe significant upcoming events and to preview or explain personnel changes, budget variances or other developments that may have an impact on the case or budget.

Bills can be used to give notice of newly discovered risks or problems that have arisen. If used to alert the client to potential problems or changes, bills should also state planned solutions or recommended actions.

Note, however, that while bills can be useful for these purposes, they should never be used as a substitute for direct and immediate communication with the client in the event of a significant budget discrepancy, setback or other serious problem.

Any developments that will significantly impact the outcome or cost of the case should be conveyed to the client promptly and personally. The client should find no surprises on a bill.

Bills also provide regular opportunities for review of the goals, strategy and progress of the case. By reviewing recently performed legal work, the attorney and client can make plans and decisions about future activities and strategies. By analyzing together the costs and benefits of completed work, the attorney can better explain and justify anticipated work.

With this information, the client can better decide what the attorney should do in the future as well as activities to curtail or avoid. This ongoing dialogue reassures clients of the responsiveness and value of their lawyers' services.

#### **Task-based billing codes**

For decades, lawyers' bills have presented narrative descriptions of work in chronological order. Clients often complained that this format did not provide detailed and meaningful information about the cost of legal services rendered.

They also complained that the narrative descriptions on legal bills were confusing and hard to read, and they did not provide data in a way that helped clients plan and manage their legal expenses.

To overcome these deficiencies, corporate clients, the American Bar Association and others developed task-based billing codes. This type of billing system breaks down legal work into categories of tasks and assigns numeric codes to each task.

Lawyers record their time using designated task codes. Because the codes are numeric, they permit time entries to be aggregated about the time and costs attributable to particular tasks or projects.

Although task-based billing is still not commonly used, it is gaining wider acceptance. The recent publication by the ABA of uniform task-based codes for litigation and counseling should hasten this process as software developers begin to make uniform task-based billing software more readily available.

In addition to their usefulness for timekeeping and billing purposes, task codes can be a valuable case planning and budgeting tool.

For planning purposes, task codes comprise a list of all of the standard tasks and activities that are performed in a legal engagement.

These are generally the same tasks and activities that should be considered when preparing a case plan.

By using the codes as a guide, the planning attorney can determine the time, staff, legal resources and expenses that must be allocated to each activity.

In the same way, task-based billing facilitates the budgeting process by providing the attorney a systematic way to predict the cost of anticipated tasks and activities.

Moreover, because of the ease with which data can be tracked and sorted, it enables attorneys to retrieve and analyze information from past legal work, such as the relative time spent by partner, associate and paralegal on case activities, or the time and expense attributed to particular tasks.

Over time, this will give the firm a database of information about the cost of services, the time it takes to perform tasks and other data from which the firm can calculate an average or range of charges for repeated activities.

This will result in greater predictability of the costs of future work and greater accuracy of the budgets for new matters.

### **Conclusion**

Most lawyers associate billing with frustration and annoyance. Instead, attorneys should use good billing practices to their advantage. Bills can improve attorney-client communication and trust as well as case planning and management. They can show the client the value of the services rendered, not just the cost.

These benefits make billing an important tool for practice success because a client who is pleased with the value of your legal services is your best source of future legal business.

*Oakland attorney Ida O. Abbott is a law practice management consultant specializing in professional development, workplace relations, executive coaching and gender issues.*

## **Test — General**

### **1 Hour MCLE Credit**

This test will earn 1 hour of general MCLE credit.

1. True/False. Business clients need case budgets to predict their legal expenses.
2. True/False. When a budget is established, the lawyer and client should agree on a procedure for handling unforeseen events that require changes in the budget.
3. True/False. Clients should participate in developing a comprehensive case plan after the attorney determines what the case requires.
4. True/False. Because they rely on their attorneys' professional judgment, clients should not be bothered with details about the case plan.
5. True/False. Clients who contribute to the creation of a case plan are less likely to argue with their lawyers over their legal bills.
6. True/False. Billing should be left to legal administrators.
7. True/False. Comparing actual time and expenses against the case budget is a measure of how efficiently a case is being managed.
8. True/False. Significant problems that arise in a case should not be presented to the client for the first time in the bill.
9. True/False. The most important reason to analyze the time spent by attorneys on a case is to justify write-offs of time to your partners.
10. True/False. Although clients should be actively involved in the planning stage of a case, they rarely need to be bothered about subsequent changes to the plan.
11. True/False. Early, frequent and ongoing attorney-client communication makes clients more willing to pay their attorneys' bills.
12. True/False. The lower the bill, the higher your legal services are valued.
13. True/False. Clear, complete and accurate bills can increase clients' trust in their attorneys.
14. True/False. A simple engagement does not require a budget.
15. True/False. Good billing practices assure good delivery of legal services.

16. True/False. Bills should be sent monthly for large engagement, less frequently for others.
17. True/False. Bills can be an effective tool for obtaining new business from existing clients.
18. All of the following are features of task-based billing except:
  - a. Dictates the tasks attorneys must perform for an engagement.
  - b. Breaks down legal work into discrete tasks.
  - c. Facilitates collection of data about the cost of legal services.
  - d. Constitutes a case planning tool.
19. Which of the following is not included in a comprehensive plan?
  - a. Scope of engagement.
  - b. Budget.
  - c. Identification of personnel assigned to case.
  - d. Prediction of outcome.
20. Case budgets promote quality client service in all of the following ways except:
  - a. Enhance attorney-client communications.
  - b. Accelerate case planning.
  - c. Guarantee a timetable.
  - d. Increase efficiency.

### **Certification**

- This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour in general education.
- The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

**MCLE ON THE WEB (\$15 PER CREDIT HOUR)**  
**TEST #3**  
**1 HOUR CREDIT**  
**GENERAL EDUCATION**

- Print the **answer form only** and answer the test questions.
- Mail **only form and check** for \$15 to:

**MCLE on the Web**  
**The State Bar of California**  
**Attn: Ibrahim Bah**  
**180 Howard Street**  
**San Francisco, CA 94105**

- Make checks payable to State Bar of California.
- A CLE certificate will be mailed to you within eight weeks.

---

Name

---

Law Firm/Organization

---

Address

---

State/Zip

---

State Bar Number (Required)

- |                          |                                 |
|--------------------------|---------------------------------|
| 1. TRUE ____ FALSE ____  | 11. TRUE ____ FALSE ____        |
| 2. TRUE ____ FALSE ____  | 12. TRUE ____ FALSE ____        |
| 3. TRUE ____ FALSE ____  | 13. TRUE ____ FALSE ____        |
| 4. TRUE ____ FALSE ____  | 14. TRUE ____ FALSE ____        |
| 5. TRUE ____ FALSE ____  | 15. TRUE ____ FALSE ____        |
| 6. TRUE ____ FALSE ____  | 16. TRUE ____ FALSE ____        |
| 7. TRUE ____ FALSE ____  | 17. TRUE ____ FALSE ____        |
| 8. TRUE ____ FALSE ____  | 18. A ____ B ____ C ____ D ____ |
| 9. TRUE ____ FALSE ____  | 19. A ____ B ____ C ____ D ____ |
| 10. TRUE ____ FALSE ____ | 20. A ____ B ____ C ____ D ____ |